IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1056 OF 1991.

The Union of India
through its General Manager,
Central Railways, having their
office at Bombay, V.T.
Bombay. : Appellant.

versus

M/s.Kailas & Company

having its business at Manmad

Tal.Nandgav, District Nasik : Respondent.

Mr.A.N.Samant for the appellants.

Mr.G.J.Mohanrao for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondent.

2. Mr.Samant, the learned counsel for the appellants, has raised only two contentions.

Firstly, he contended that the Railway Receipt was issued by the Railway as "Said to Contain" basis.

3. Secondly, he contended that the tribunal has awarded interest at the rate of 12% per annum. According to him, it should be 9% per annum in view of the judgment of this Court reported in **2005 (1) Mh. L.J. 165 [Maharashtra State Electricity Board vs. Union of India].** It was a claim against the railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed the same judgment earlier, therefore, the rate of interest is to be reduced to 9% per annum.

4. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned or alternatively the interest rate should be reduced to 9% per annum.

5. So far as the contention of Mr.Samant regarding RR with the endorsement "Said to Contain" is concerned, the same is required to be rejected. In this case, the claimant had entrusted two wagon load consignments of onions

to the railways for carriage ex-Yeola to Naini. According to the claimant, at the time of loading the partner of the applicant firm was present and no remarks were noted on the Forwarding Notes regarding defective packing. The applicant contended that the railways had not taken proper care of the goods and the goods were delivered abnormally and unjustifiably late. The goods were found in rotten and damaged condition. The applicant took the delivery of the goods on assessment without prejudice. The applicant has claimed compensation of Rs.4,300/- for damages to their goods including notice and postal charges with future interest.

. The Tribunal framed as many as 7 Issues but the Issue regarding RR "Said to contain" was not at all framed. The tribunal found that there was total negligence and inordinate delay in delivery of consignment by the railways. So far as compensation is concerned, the railways had issued Assessment and Damaged Certificate (Exhibit 1 and 2). It appears from the damage certificate that out of the consignment of 762 packets, 580 packets were delivered at the destination in damaged condition. The tribunal

found that the railways had not taken proper care of the goods during the transit and brought them to the destination abnormally late in rotten and damaged condition.

6. Railways can raise defence of said to contain when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of actual damage certificate and if the actual damage suffered can be ascertained on the basis of the evidence on record, then question as to how much quantity was entrusted to the railways becomes secondary. The damage certificate shows that railways were in a position to make assessment of the damages in respect of the bags, number of bags actually damaged under the invoice. The tribunal has found that the applicants have suffered a loss of Rs.5.50 per packet on the damaged packets of onion. As per damage certificate (Exhibit 1 and 2) the applicants suffered partial loss to 580 packets in both the consignment. Therefore, the applicant was entitled to Rs.3,190/-.

7. So far as interest part is concerned, the contention of Mr.Samant is required to be accepted in view of the judgment of this court, as stated above.

8. Mr.Samant for the appellant states that the appellant has deposited the amount. In the result, I pass the following order:-

:ORDER:

. The Appeal is partly allowed.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application up to the date of withdrawal by the claimant of the amount deposited by the railways pursuant to the order of this court or up to the date of investment with proportionate costs of the tribunal.

. so far as this appeal is concerned, no order as to costs.

[D.G.DESHPANDE, J]